1`IN THE HIGH COURT OF HIMACHAL PRADESH,
SHIMLA.

C.M.P. No.907 of 2006 and C.M.P.No.24 of 2007 in R.S.A.No.285 of 2004
&C.M.P No.908 of 2006 and C.M.P.No.27 of 2007 in R.S.A.No.286 of 2004.

Judgment reserved on: March 19, 2007.

Date of Decision: **March 26, 2007**.

(i) **RSA No. 285 of 2004**.

Bimal Kumar .....Appellant.
Versus
Ram Kumar and others …Respondents.

(ii) **RSA No. 286 of 2004**.

Bimal Kumar ……..Appellant.
Versus
Ram Kumar and others .....Respondents.

Coram

The Hon'ble Mr. Justice V.K. Gupta, Chief Justice.

Whether approved for reporting?[1]

For the Appellant: Mr. Bhupender Gupta, Sr. Advocate with Mr. Janesh Gupta, Advocate in both the RSAs.
For the Respondents: Mr. Ashwani Kumar Chopra, Sr. Advocate with Mr. K.D. Sood & Ms. Rupa Pathaia, Advocates for respondents No. 1 to 3 in RSA No. 285 of 2004 and respondents No. 1 & 2 in RSa No. 286 of 2004.

V.K. Gupta, C. J.:

C.M.P. No.907 of 2006 and C.M.P.No.24 of 2007 in R.S.A.No.285 of 2004
& C.M.P No.908 of 2006 and C.M.P.No.27 of 2007 in R.S.A.No.286 of 2004

Detailed arguments in these cases were heard on 19th March, 2007 when the matters were adjourned for pronouncement of orders on the aforesaid applications. By this common order, all the aforesaid four applications in the aforesaid two separate Regular Second Appeals are

[1] Whether Reporters of Local Papers may be allowed to see the judgment?

being disposed of together because identical issues and questions are involved for consideration and decision therein.

2. R.S.A.No.285 of 2004 and R.S.A.No.286 of 2004 were filed by the common appellant in both the appeals, namely, Shri Bimal Kumar against the judgments and decrees passed by the learned District Judge, Solan in two Civil First Appeals pending before him against the judgments and decrees passed by the learned the then Senior Sub Judge, Solan in two Civil Suits pending before him. Both the suits were filed by the opposite parties against the appellant Bimal Kumar. The trial court decreed both the suits in favour of the plaintiffs. Feeling aggrieved, as noticed above, the appellant Bimal Kumar filed the Civil First Appeals before the learned first Appellate Court, namely, District Judge, Solan, who, as noticed above, dismissed the said appeals affirming the decrees passed by the learned trial court. It is against the aforesaid concurrent findings of the two courts below that the aforementioned two Regular Second Appeals were filed by Bimal Kumar appellant in this Court.

3. Both the appeals were admitted by this Court vide its order dated 14th July, 2004. Since then these have been pending consideration in this Court.

4. Cross Objections have also been filed by the respondents in both the appeals.

5. On 17th November, 2006, C.M.P.No.907 of 2006 was filed in R.S.A.No.285 of 2004 in terms of Order 23 Rule 3 read with Section 151 C.P.C. by the appellant and the respondents jointly. This application, which bears the date of 21st August, 2006 (but actually was filed in the court on 17th November, 2006) is supported by the separate affidavits of appellant Bimal Kumar and one Akhey Chand respondent. The aforesaid

two affidavits of the aforesaid two deponents were also affirmed on 21st August, 2006. Through the medium of this application, the parties in the appeal averred and submitted that they have compromised the matter and that based on the terms of the compromise, the appellant was withdrawing all his claims against the respondents. The terms of the compromise are included in clauses (a) to (d) of Para 1 of the application, which, inter alia, stipulate that the appellant has agreed not to claim any right, title or interest of any nature in the properties forming the subject matter of the dispute in the aforesaid appeal. Various other averments are also made in the application and ultimately it was prayed in the application that in the interest of justice, the compromise between the parties may be recorded and decree in terms of the compromise be passed and the appeal be disposed of.

6. Similar, identical application was filed in R.S.A. No.286 of 2004 being C.M.P No.908 of 2006. This application was also filed on 17th November, 2006 but unlike the application in R.S.A.No.285 of 2004, the application in R.S.A.No.286 of 2004 bears the date of 17th November, 2006 and it is on this date also that the two affidavits filed by Bimal Kumar and Akhey Chand in support of the application, were sworn and affirmed by the aforesaid two deponents. C.M.P.No.908 of 2006 being identical in terms contained almost similar averments as are contained in C.M.P.No.907 of 2006 except substantially a different averment relating to Civil Suit No.5 of 2002 regarding the disputed sale of a property at Parwanu and proceedings pending under Order 39 Rule 2-A C.P.C. in the Court of the then Senior Sub Judge, Solan arising out of the aforesaid Civil Suit No.5 of 2002. These additional averments are contained in clauses (d) and (e) of Para 1 of C.M.P.No.908 of 2006.

7. C.M.P.No.907 of 2006 and C.M.P.No.908 of 2006 are signed by the appellant and the respondent as well as their counsel, namely, Shri Neeraj Gupta, Advocate for the appellant and Shri K.D.Sood, Advocate, for the respondents.

8. Before, however, C.M.Ps 907 of 2006 and 908 of 2006 could be taken up for consideration and passing of appropriate orders by the Court, the appellant filed C.M.P.No.24 of 2007 in R.S.A.No.285 of 2004 and C.M.P.No.27 of 2007 in R.S.A No.286 of 2004. Both these applications have been filed purportedly under Section 151 C.P.C. Through the medium of theses two applications filed in the aforesaid two appeals, the appellant prayed for the dismissal of C.M.Ps No.907 and 908 of 2006, on the grounds generally contained in Paras 2 to 8 of the said two applications. Particularly as well as generally, the allegations revolve around the edifice of the respondents having obtained signatures of the appellant on the compromise applications as well as the affidavits on the assurance held out by them that in case the appellant withdraws the appeals and gives ups his claims, he would be duly "compensated". Para 2 of the applications suggests that it is based on such assurance that the appellant was persuaded to sign the compromise applications as well as affidavits. In Para 4 of the application, there is a reiteration about the assurance held out by the respondents for "compensating" the appellant to the extent of his "due share". Additionally, there is an averment that the respondents persuaded the appellant not to get the compensation aspect entered in the compromise applications because they did not want the settlement between the parties to become public. In Para 5 of the applications, it has been averred that the respondent had agreed to give up their claims over a property situated at Solan and it was under this

bonafide belief and impression that the appellant was allured into, and persuaded to sign the compromise application as well as the affidavits. Various other incidental and ancillary averments have been made in Paras 6, 7 and 8 of the applications.

9. What is under consideration before me in the aforesaid two appeals is whether to allow C.M.Ps No.907 and 908 of 2006 or to reject these two applications, thus consequentially allowing C.M.Ps No.24 and 27 of 2007.

10. Rule 3 of Order 23 C.P.C. reads thus:

> "**3. Compromise of suit.-** Where it is proved to the satisfaction of the Court that a suit has been adjusted wholly or in part by any lawful agreement or compromise in writing and signed by the parties, or where the defendant satisfies the plaintiff in respect of the whole or any part of the subject matter of the suit, the Court shall order such agreement, compromise or satisfaction to be recorded, and shall pass a decree in accordance therewith so far as it relates to the parties to the suit, whether or not the subject matter of the agreement, compromise or satisfaction is the same as the subject matter of the suit.
>
> Provided that where it is alleged by one party and denied by the other that an adjustment or satisfaction has been arrived at, the Court shall decide the question; but no adjournment shall be granted for the purpose of deciding the question, unless the Court, for reasons to be recorded, thinks fit to grant such adjournment.
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> *Explanation*.- An agreement or compromise which is void or voidable under the Indian Contract Act, 1872 (9 of 1872), shall not be deemed to be lawful within the meaning of this rule."

11. A plain reading of the aforesaid Rule 3 of Order 23 clearly suggests that where the Court is satisfied that a suit has been adjusted wholly or in part by any lawful agreement between the parties or a compromise has been duly effected between the parties, in writing and

signed by the parties, the Court has to pass an order that such agreement or compromise be recorded and accordingly it has to pass a decree in accordance therewith in so far as it relates to the parties to the suit. Once, therefore, in terms of Order 23 Rule 3 C.P.C. the parties jointly, of their own accord, free will and volition approach the Court and inform the Court that they have compromised the matter, such joint compromise application would amount to a lawful agreement between the parties and if the Court is satisfied that the parties, in fact, had entered into such a lawful agreement, it has no option but to record the agreement and based thereupon to pass a decree, thus disposing of the matter pending before the Court. The law is well settled that the parties having entered into a lawful agreement and jointly compromised the matter, cannot retract there-from or wriggle out except in some rare, exceptional and specified circumstances.

12. In **Pannalal and another Vs. Kisanlal and others, AIR 1952 Nagpur 84**, the learned single Bench of Nagpur High Court was dealing with the question as to whether it is open to a party to an agreement to challenge the agreement on the ground of fraud. Undoubtedly, it has been held in this judgment that fraud, in fact, is a ground for challenging the agreement and if it is alleged by a party that a compromise was entered into through fraudulent means, under Order 23 Rule 3 C.P.C. an investigation can be conducted by the Court to decide whether to terminate the agreement and thus to reject the same. The following observations in the aforesaid judgment are apposite and I quote:

> "I have not read all these authorities. Some of them do not go as far as that, but if they do then with the utmost respect I am unable to agree. In my opinion the word 'lawful' has a wider meaning as used there than is contended for in the

> argument. Under S.23 of the Contract Act it is explained that the consideration or object of an agreement is lawful unless, and then a number of instances are set out. One of them is if the object or consideration is fraudulent. But that does not refer to the contract itself being brought about by fraud. Section 23 is confined to the object or consideration. Now a contract with a fraudulent object may be brought about with the full consent and agreement of the parties. It is not fraudulent as between the parties, that is to say neither of the parties is being defrauded, but the object is to defraud somebody else. That is the type of agreement which is held to be unlawful. All other agreements are lawful even though one of the parties may be defrauded by the other, but it is open to the defrauded party in that event to have the agreement set aside. So also a void agreement is not necessarily unlawful unless its object or consideration falls within the purview of S.23. It is just non-existent in the eye of the law. Viewing the matter in that light, a compromise which is said to be fraudulent can be investigated by the Court under O.XXIII, R.3."

13. There is no manner of doubt that fraud vitiates an agreement. Similarly, there is no manner of doubt that an agreement brought about by undue influence, threat, coercion or by duress might also be invalid in the eyes of law. Applying these well established and well recognized principles, we find that in the present case, no element of fraud or undue influence, threat, coercion or duress either exists or has been spelt out in clear terms or made out by the appellant warranting vitiation of the compromise arrived at between the parties or leading to a conclusion by the Court that the agreement was not lawful or that it was vitiated because of any of the mischiefs or vices. A very careful reading of the averments in C.M.Ps No.24 of 2007 and 27 of 2007 clearly indicates the total absence of any of the aforesaid elements or ingredients of fraud etc. The

only ground urged by the appellant in the two applications is that an assurance was held out to him by the respondents to do certain acts. These are very unspecified and vague as well as unsubstantiated allegations which in any event do not amount to fraud or undue influence, threat, coercion or duress. It is not the appellant's case that the appellant is a rustic villager. It is also not the appellant's case that any force was applied against him. The appellant is a literate educated person. The compromise applications have been signed, apart from the appellant, by his duly constituted Advocate. No explanation has been forthcoming from any quarter as to how and under what circumstances did the Advocate sign the compromise applications if fraud was played upon the appellant. Affidavits supporting the applications have been sworn and affirmed by the appellant. There is not an iota of allegations as to how did the appellant come about to swear and affirm these affidavits if he was under duress, fraud or coercion etc.

14. The compromise application in one appeal is dated 21st August, 2006 and it is on the same date that the affidavits were also sworn and affirmed. The application for compromise however was filed on 17th November, 2006 that is, almost three months later.

15. The compromise applications by themselves contain the terms and conditions of the compromise having been entered into between the parties. No separate compromise deed accompanying the applications was filed because the parties did not execute any separate compromise deed incorporating the terms and conditions of the compromise. All the terms and conditions of the compromise have been incorporated in the applications themselves.

16. Mr. Bhupender Gupta, learned Senior counsel appearing for the appellant relied upon the following judgments also in addition to **Pannalal and another Vs. Kisanlal and others (supra): Thomas George vs Skariah Joseph and another, AIR 1973 Kerala 140, Rameswar Sarkar Vs. State of West Bengal and others, AIR 1986 Calcutta 19 and Banwari Lal vs. Smt.Chando Devi (through L.R) and another AIR 1993 SC 1139.**

17. As far as **Thomas George vs Skariah Joseph and another** (supra) is concerned, this case has no applicability to the facts of our case because in this case the plaintiff had moved an application under Order 23 Rule 1(1) of the Code of Civil Procedure for withdrawal of the suit and before the Court could pass orders on the aforesaid withdrawal application and before the aforesaid withdrawal application was judicially noticed, the plaintiff sought to withdraw the withdrawal application by filing another application. It was held that the plaintiff was at liberty to withdraw the withdrawal application. The aforesaid fact situation is not at all akin to our case because the withdrawal application was filed by the plaintiff unilaterally for withdrawal of the suit. There was no question of any bilateral agreement having been entered into between the parties in that suit, nor was there any situation in existence in the aforesaid case where a joint compromise had been entered into between the parties praying for disposal of the appeal in terms thereof.

18. To the same effect is the Division Bench judgment in the case of ***Rameswar Sarkar*** vs. State ***of West Bengal and others (supra)***. That case also related to an unilateral act of the plaintiff in first having withdrawn the suit and later on filing an application under Section 151 of

the Code of Civil Procedure praying for withdrawal of the application for withdrawal of the suit.

19. Coming to the case of **Banwari Lal vs. Smt.Chando Devi (through L.R) and another** (supra). In this case a fabricated document was presented to the Court allegedly on behalf of the plaintiff for withdrawal of the suit on the ground that a compromise had been effected between the plaintiff and the defendant in terms whereof the suit property had been delivered to the defendant. Based on such fabricated withdrawal application, the trial Court had disposed of the suit as withdrawn. Later on the plaintiff on discovering that his counsel had forged his thumb impression and had thus filed a fabricated application, approached the trial Court for restoration of the suit and for its hearing on merit. Discussing the law on the subject in the context of fraudulent acts, their Lordships of the Supreme Court made the following observations:-

> "……The Court before which it is alleged by one of the parties to the alleged compromise that no such compromise had been entered between the parties that Court has to decide whether the agreement or compromise in question was lawful and not void or voidable under the Indian Contract Act. If the agreement or the compromise itself is fraudulent then it shall be deemed to be void within the meaning of the explanation to the proviso to R.3 and as such not lawful. The learned Subordinate Judge was perfectly justified in entertaining the application filed on behalf of the appellant and considering the question as to whether there had been a lawful agreement or compromise on the basis of which the Court could have recorded such agreement or compromise on 27.2.1991. Having come to the conclusion on the material produced that the compromise was not lawful within the meaning of R.3, there was no option left except to recall that order."

20. On a totality of facts and circumstances of this case, therefore, I have absolutely no manner of doubt in my mind that C.M.Ps No.907 and 908 of 2006 were jointly filed by the appellant and the respondents, on the free will and volition of the parties including the appellant and by these two applications the parties have entered into a compromise which can thus be termed as a lawful agreement between the parties in terms of Order 23 Rule 3 CPC, which binds the parties as well as enjoins upon the Court a mandatory obligation to record the agreement and to pass decrees in terms thereof. It was not, therefore open to the appellant to have wriggled out of the compromise or to have retracted from the same. These two applications are accordingly allowed and consequentially C.M.Ps No.24 and 27 of 2007 are dismissed.

21. Resultantly, both the appeals are disposed of in terms of the compromises having thus been entered into between the parties, in accordance with the terms contained in C.M.Ps No.907 and 908 of 2006. Decrees based thereupon accordingly are passed.

March 26, 2007 **(V.K. Gupta),**
Chief Justice.

(drs)